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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

94-11

IN RE APPLICATION OF

La Star Cellular Telephone Company

For a Construction Permit for Facilities Operating on
Block B in Domestic Public Cellular Radio Telecom-
munications Service in the New Orleans MSA.

and

New Orleans CGSA, Inc.

To Amend its Construction Permit for Facilities Operat-
ing on Block B in the Domestic Public Cellular Radio
Telecommunications Service, Call Sign KNKA224, in the
New Orleans MSA.

CC Docket No
90-257

TO: The Commission

**PETITION OF UNITED STATES CELLULAR
CORPORATION TO DELETE OR NULLIFY THE
EFFECT OF FOOTNOTE THREE**

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February 2, 1993

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SUMMARY

In *La Star Cellular Telephone Company*, 7 FCC Rcd. 3762 (1992) (*Decision*), the Commission dismissed La Star's application for authorization to provide cellular service as a wireline carrier in then unserved portions of the New Orleans MSA. The dismissal was based on the finding that La Star was not eligible to apply for the wireline authorization because it was not and had never been *de facto* controlled by SJI Cellular, Inc. (SJI), the company with a wireline presence in the New Orleans MSA, but rather had been controlled by its minority owners. Since 1987, United States Cellular Corporation (USCC) has owned indirectly a 49 percent interest in La Star, and the Commission's *Decision* has caused and is causing unwarranted harm to USCC, that the Commission could not have intended.

In dismissing La Star's application, the Commission made no finding that the qualifications of USCC to be a Commission licensee were in doubt, or that USCC had in any manner been less than candid concerning its role with La Star. This is particularly significant, because New Orleans CGSA, Inc. (NOCGSA), the mutually-exclusive applicant for the unserved portions of the New Orleans MSA, had requested specific findings that USCC witnesses had not been candid in their testimony concerning control of La Star, and had filed contingent exceptions to the Presiding Administrative Law Judge's refusal to make such findings.

In Footnote 3 to its decision, the Commission dismissed NOCGSA's contingent exceptions to the *Initial Decision* as moot, but ambiguously suggested a possibility of the limited revisiting of issues concerning the conduct of SJI and USCC in light of the relevant findings and conclusions in *La Star*. The

ambiguous language of Footnote 3 to the *Decision*, like the *Decision* as a whole, makes no adverse findings and draws no adverse conclusions concerning the qualifications of USCC to be a Commission licensee. Nevertheless, this ambiguity persists and has caused substantial harm to USCC, the public, and the Commission's processes.

As a result of the ambiguous language of Footnote 3 in *La Star*, grants of uncontested USCC applications have been delayed. Additionally, grants of these uncontested applications have caused considerable uncertainty to third parties because they are conditioned on subsequent action that might be taken by the Commission with respect to Footnote 3. The inclusion of Footnote 3 has also resulted in the interjection of baseless allegations citing *La Star* in various unrelated FCC proceedings. Moreover, in private contractual dealings, USCC has been required to respond to numerous allegations purportedly grounded in Footnote 3, despite the fact that such allegations are untrue in every respect and have never been adopted by the Commission. The end result has been a deleterious effect on USCC's ability, as a publicly traded company serving more than 185,000 customers and operating (or under agreement to operate) in more than 120 cellular markets, to develop regionalized cellular service and to expand the provision of cellular service in these regional markets.

In this Petition, USCC demonstrates that Footnote 3 should be deleted or its effects otherwise nullified because it has no basis in fact, serves no useful purpose, and adversely affects the interests of USCC, the public, and the

Commission's processes. First, USCC demonstrates that all USCC witnesses were entirely candid during the *La Star* proceeding. Second, USCC demonstrates, without challenging at this time the basic findings and holding of the Commission, that USCC's conduct in the *La Star* proceeding does not stem from any attempt to violate the Commission's rules, show any likelihood that USCC would improperly assume control of licensees in other markets, or otherwise reflect adversely on USCC's qualifications to be a Commission licensee. For these reasons, the Commission should promptly delete Footnote 3 from *La Star*, or otherwise nullify it insofar as it tends to suggest that the qualifications of USCC and its affiliates as Commission licensees eligible to develop cellular service in other markets are questionable or have in any way been impaired or even brought into question.¹

¹ References to USCC here include USCC's various direct or indirect subsidiaries and affiliates which hold or have applied for Commission licenses.

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**PETITION OF UNITED STATES CELLULAR
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EFFECT OF FOOTNOTE THREE**

United States Cellular Corporation (USCC), an intervenor in the above captioned proceeding, files herewith, by its attorneys, its Petition to Delete or Nullify the Effect of Footnote 3 of the Commission's *Decision* there, *La Star Cellular Telephone Company*, 7 FCC Rcd. 3762 (1992) (*Decision*).

I. Introduction and Background.

In 1983, La Star Cellular Telephone Company (La Star) was formed as a joint venture between 51 percent partner SJI Cellular, Inc. (SJI)¹ and 49 percent partner Star Cellular Telephone Company (Star).² The Joint Venture Agreement envisioned the construction and operation of a wireline cellular facility in then unserved portions of the New Orleans MSA. *La Star Cellular Telephone Company*, 6 FCC Rcd 6860, 6861 (ALJ, 1991) (*Initial Decision*). In September, 1983, La Star filed an application to provide cellular service to St. Tammany Parish in Louisiana. *Id.* ¶12. La Star's eligibility for the wireline cellular frequencies was predicated on SJI's ownership of a local exchange company that provides telephone service within the New Orleans MSA.

Prior to August 1987, neither Telephone and Data Systems, Inc. (TDS) nor any of its subsidiaries, including USCC, had any connection with La Star. In August, 1987, USCC acquired all of the capital stock of Star Comm and all of the capital stock of CSII. USCC Exhibit No. 1, pp. 8 - 10. In connection with its

¹ SJI is a wholly owned subsidiary of SJI, Inc., which also is the parent of LaFourche Telephone Company, a local exchange company.

² For the first four years of its existence, *i.e.* from September, 1983 through July, 1987, Star was a Louisiana partnership consisting of Cellular Systems Investments, Inc. (CSII), or its subsidiary, CSII of Baton Rouge, and Star Cellular Communications, Inc. (Star Comm). *Id.* ¶18. CSII was a subsidiary of Maxcell Telecom Plus (Maxcell); Star Comm was a subsidiary of Star Telephone Company, Inc. (STC). In 1987, Star was incorporated by its two partners -- CSII and Star Comm -- becoming known as Star Cellular Telephone Company, Inc. (Star, Inc.) with CSII and Star Comm as its sole shareholders. Star, Inc. then became the substituted partner in La Star.

acquisition and ownership of Star Comm and CSII, USCC through these subsidiaries became an indirect owner of 49 percent of La Star and thus assumed the rights and responsibilities of Star, Inc. with respect to the Joint Venture Agreement. See *Initial Decision*, ¶150.³

In May, 1990, in response to a remand order from the United States Court of Appeals for the District of Columbia Circuit, the Commission designated La Star's application for hearing on, among other issues, La Star's eligibility for wireline frequencies. The hearing on La Star's wireline eligibility focused on the extent to which the majority partner, SJI, had been in control of La Star during the period 1983 through July 1987 when STC and Maxcell had ownership interests in Star, *Initial Decision*, ¶¶10-47, 214 - 218, and during the subsequent period, August 1987 through 1991, when USCC had such interests. *Id.* ¶¶48 - 93, 219 - 223. USCC, which was initially denied party status in the hearing, did not participate in the proceeding at all with respect to the 1983- July 1987 period. *Id.* at 6890. USCC was, however, belatedly allowed to intervene with respect to the August 1987-1991 period **only after the record in the proceeding had been closed.** *Ibid.* USCC had no opportunity to examine any SJI witness; it offered one

³ Obviously, the corporate separateness and distinctiveness among United States Cellular Corporation and its subsidiaries and affiliates, including those involved in the chain of ownership between USCC and La Star, are meaningful. For purposes of the issues pertinent to this FCC proceeding, however, "USCC" is used throughout this Petition to apply not only to United States Cellular Corporation but also to its subsidiaries and affiliates, including those involved in the chain of ownership between USCC and La Star.

exhibit, consisting of the written testimony of its president, Mr. H. Donald Nelson. USCC Exhibit No. 1. Various USCC personnel and SJI personnel, however, were called by La Star to testify in the proceeding with respect to the August 1987-1991 period, and were extensively cross-examined by counsel to New Orleans CGSA, Inc. (NOCGSA), the competing applicant for the unserved area in the New Orleans MSA. In its Proposed Findings of Fact and Conclusions, NOCGSA argued that SJI and USCC personnel had lied during their testimony about matters related to the control of La Star.

On November 25, 1991, the *Initial Decision* was released, granting the application of NOCGSA and dismissing the mutually-exclusive La Star application. La Star's application was dismissed based on the finding that La Star was not eligible to apply for the requested authorization because it was not and had never been *de facto* controlled by SJI, the majority partner and wireline eligible entity. The Presiding Administrative Law Judge concluded that STC and Maxcell, not SJI, had controlled La Star during the 1983 - July 1987 period, and that USCC, not SJI, had been in control of La Star since August 1987. *Initial Decision*, ¶¶212-223. The Presiding Administrative Law Judge, however, made none of the findings, and drew none of the conclusions, urged by NOCGSA with respect to the candor of SJI and USCC. NOCGSA filed Contingent Exceptions urging the Commission to determine that SJI and USCC personnel had made misrepresentations and lacked candor during the hearing. The Commission affirmed the *Initial Decision* in June of 1992. *La Star Cellular Telephone Company*, 7 FCC Rcd. 3762

(1992) (*Decision*). The Commission refused to reach NOCGSA's contingent exceptions, which it dismissed as moot. However, the Commission did adopt Footnote 3 to the *Decision*.

Footnote 3 states that, because of the affirmance of the determination that La Star was not eligible to be a wireline applicant in the New Orleans MSA,

we do not reach the question raised in NOCGSA's exceptions of whether La Star's principals lacked candor in their hearing testimony concerning the control of La Star. NOCGSA's exceptions and La Star's motion to strike those exceptions will be dismissed as moot. Questions regarding the conduct of SJI and USCC in this case may be revisited in light of the relevant findings and conclusions here in future proceedings where the other interests of these parties have decisional significance. *See Character Qualifications*, 102 FCC 2d 1179, 2333-24 ¶92 (1986), *recon. denied*, 1 FCC Rcd 421 (1986).

Decision, n.3. USCC and La Star separately filed Notices of Appeal of the *Decision*, and those appeals remain pending before the Court of Appeals for the District of Columbia Circuit (Case Numbers 92-1291 and 92-1294).

As a result of the presence of Footnote 3 in the *Decision*, various parties with economic interests adverse to USCC have attempted to distort the record in other proceedings by summarily asserting that Footnote 3 demonstrates the lack of qualifications on the part of USCC to hold interests in FCC licenses. Because of the harm caused to the public, the Commission's processes, and USCC's interest in upholding its good name and further developing the provision of

regional cellular service throughout the United States, the Commission, based on the record in the *La Star* proceeding, should determine that no adverse findings were made, or could validly have been made, with respect to USCC's qualification to be a licensee in other cellular markets. On that basis, the Commission should delete Footnote 3, or nullify it as it relates to USCC.⁴

II. The Harm to the Public, the Commission's Processes, and USCC Has Been Substantial.

As a consequence of Footnote 3, substantial delay has been encountered in securing Commission grants of numerous uncontested applications filed by USCC.⁵ Moreover, the Commission has conditioned many of the belatedly granted authorizations to construct, modify, transfer control of, and assign systems on whatever action the Commission might later take concerning the matters raised in Footnote 3, leaving all of those grants under a potential cloud for the indeterminate future. In addition, USCC has been attacked in pleadings filed in wholly unrelated matters by various parties with adverse economic interests. These parties have cited Footnote 3 as a basis for action on matters to which the *Decision* has no pertinence whatsoever. For example, parties have attempted to

⁴ The Court of Appeals for the District of Columbia Circuit should be requested to hold USCC's and *La Star*'s appeals in abeyance while the Commission acts on this Petition. In the alternative, the Commission might treat the present petition as seeking a declaratory ruling, pursuant to Section 1.2 of the Rules, that Footnote 3 has no significance for, and may not be construed as having any impact on, any other proceeding before the Commission.

⁵ See, e.g., Report No. CL-93-22, released November 13, 1992. It should be noted that USCC, not TDS, is cited in Footnote 3.

interject issues purporting to be based on Footnote 3 into Commission proceedings involving the Baton Rouge, Louisiana MSA (MSD 92-39); the Biloxi, Mississippi MSA (MSD 91-26); the Manchester/Nashua, New Hampshire MSA (MSD 92-22) and the New York 4 RSA (File No. 11621-CL-P-562-B-89). These collateral filings inevitably delay and complicate Commission action. Finally, numerous parties continue to use Footnote 3, or threaten to use Footnote 3, as leverage in business negotiations with TDS and USCC, concerning the acquisition or sale of cellular and other communications facilities and the management and operation of cellular markets.

The delay in granting applications, the conditions imposed on grants, and the injection of confusion in pending litigation and business matters, all as a consequence of the ambiguities of Footnote 3, have been harmful to TDS and its subsidiary USCC, and other private parties including proposed assignors, as well as to the public. TDS, a local exchange, paging and cellular business, and USCC, are both publicly-traded companies. USCC provides cellular service to more than 185,000 customers in more than 120 cellular markets throughout the United States.⁶ Delay and uncertainty resulting from the language in Footnote 3 interfere with the efforts of USCC to establish more efficient regional cellular networks valued by the public and the FCC, and prevent USCC from most expeditiously expanding cellular facilities to provide service to unserved or underserved areas.

⁶ Approximately 80% of the stock of TDS is widely held by the public, as is approximately 10% of the stock of USCC.

Vacuous and conclusory allegations concerning Footnote 3 in unrelated matters also appear to be consuming substantial Commission resources and greatly increasing the difficulty and time involved in resolving these unrelated matters. Prompt action on this Petition would resolve any outstanding questions as to the qualifications of TDS and its subsidiaries, particularly USCC, and would therefore be in the public interest.

III. Footnote 3 Was Adopted in Error.

A. Footnote 3 is Ambiguous.

In Footnote 3, the Commission expressly stated that the Commission did **not** reach the issue of whether La Star's principals lacked candor in their hearing testimony, dismissing as moot NOCGSA's exceptions challenging the lack of adverse character qualifications findings. Nevertheless, Footnote 3 suggests that "Questions regarding the conduct of SJI and USCC in this case [might] . . . be revisited in light of the relevant findings and conclusions here in future proceedings where the other interests of these parties have decisional significance." *Decision*, 7 FCC Rcd. at 3767, n.3. The precise nature of the questions that can be revisited is not specified in Footnote 3, and the possible constructions of Footnote 3 are either internally inconsistent or unsupported by the record.

First, Footnote 3 might be interpreted to mean that the **candor** questions raised by NOCGSA might be considered in future proceedings "in light of the relevant **findings and conclusions here**." (Emphasis added) This is suggested by

the fact that Footnote 3 pertains to the dismissal as moot of NOCGSA's exceptions to the Presiding Administrative Law Judge's refusal to adopt its position that USCC and SJI personnel testified untruthfully and that La Star should have been held disqualified on that ground independently of other matters. However, the Commission, like the Presiding Administrative Law Judge, made no findings or conclusions concerning the candor or other conduct of anyone, and did not suggest that any adverse character qualifications findings would have been appropriate. In these circumstances, the Commission could not have intended for NOCGSA's claims that USCC witnesses lacked candor to be adjudicated later, in subsequent proceedings, based upon the "findings and conclusions" in the *Decision*: There **are** no "findings or conclusions" concerning the candor of USCC's personnel. This absence of such findings and conclusions served as the very basis for NOCGSA's "moot" exceptions. Moreover, the Commission's citation to *Character Qualifications*, 102 FCC 2d 1179, 1223-24 ¶192 (1986), *recon. denied*, 1 FCC Rcd 421 (1986), would not support subsequent inquiry into the candor of witnesses in *La Star*. The referenced precedent addresses procedures to be followed after an **adjudication** of misconduct; it says nothing about leaving for subsequent resolution in a separate proceeding an adverse party's mooted exceptions to a judge's refusal to adopt adverse candor findings and conclusions about testimony at a hearing.⁷ The Commission does not automatically

⁷ Additionally, a construction of Footnote 3 as a call for a subsequent analysis of the candor of La Star representatives at hearing is bewildering because the subsequent analysis only relates to a context "where the other interests of these
(continued...)"

export even express findings of deliberate misrepresentation and lack of candor to other proceedings involving other licensee interests. Whether to do so is an important question, to be resolved on the basis of the facts in individual cases. *KQED, Inc.*, 3 FCC Rcd 2821, 2828 (Rev. Bd. 1988), *aff'd* 6 FCC Rcd 625 (1990). In *KQED*, the Commission expressly found that the licensee had deliberately misrepresented material facts. There was no such finding in *La Star*; there were merely allegations, which the Presiding Administrative Law Judge declined to credit. In *KQED*, the Commission expressly declined to export the adverse findings to other proceedings involving other interests of that licensee. If **candor** were the focus of Footnote 3, it is very likely that the Commission would have either limited consideration to the *La Star* case or provided some analysis of whether the alleged lack of candor were so pervasive as to infect other USCC interests. The Commission would not simply have left the question unresolved, as it did in Footnote 3. In any event, no adverse candor findings or conclusions or any other adverse character qualifications findings would have been appropriate, as the instant Petition demonstrates in Section IV B.

Second, Footnote 3 might be interpreted to mean that, independently of any question of candor raised by NOCGSA, the findings and conclusions that USCC had *de facto* control of *La Star* could be revisited in subsequent proceedings

⁷(...continued)

parties have decisional significance." Again, the Commission's meaning is extremely unclear.

"where the other interests of [USCC and SJI] have decisional significance." This would be a strained interpretation, because the statement is made in the context of the dismissal of NOCGSA's exceptions to the absence of any adverse candor findings in the *Initial Decision*. Moreover, while the Commission cites *Character Qualifications*, 102 FCC 2d 1179, 1223-24 ¶92 (1986), *recon. denied*, 1 FCC Rcd 421 (1986) in Footnote 3, the *Decision* contains no finding and draws no conclusion that USCC **intentionally** sought or obtained control, or worse, that it concealed any *de facto* control of La Star. Furthermore, as demonstrated below in Section IV C, there is no valid basis for finding that USCC assumed control of La Star knowingly, even assuming *arguendo* the validity of the finding that SJI relinquished control.

Finally, Footnote 3 might be interpreted to mean that the findings concerning USCC's *de facto* control of La Star contained in the *Decision* could be cited in other proceedings where allegations were raised that USCC similarly was in *de facto* control of a licensee. This interpretation is also unlikely because the statement is made in the context of the dismissal of NOCGSA's exceptions to the absence of adverse candor findings. Moreover, as demonstrated in Section IV below, because USCC's actions in La Star were directed by a Joint Venture Agreement that it had no role in negotiating, *La Star's* findings are not sufficiently relevant to other proceedings to warrant any comparison.

Regardless of which, if any, of the three interpretations is correct, Footnote 3 is an aberration. In no prior case has the Commission ever left matters unresolved to the extent that it has here. In the sections that follow, USCC demonstrates that regardless of whether the Commission was correct in holding that USCC came into *de facto* control of La Star, the record shows (a) that USCC witnesses in no way lacked in candor at the hearing, (b) that USCC's conduct reveals no intention of seizing control of La Star, and (c) that no adverse inferences can therefore be drawn for use in evaluating USCC's conduct elsewhere.

B. No USCC Witness Lacked Candor.

If Footnote 3 is intended to reserve for future resolution any questions concerning the candor of La Star witnesses at hearing, it appears to be predicated on NOCGSA's unsuccessful attempts to convince the Presiding Administrative Law Judge and later the Commission to rule that USCC and SJI witnesses were untruthful in their testimony. According to NOCGSA, **all** of the witnesses presented by La Star lied repeatedly under oath, and their "extensive and irrefutable lack of candor" independently required La Star's disqualification. NOCGSA Proposed Conclusion No. 244. These allegations are patently untrue.

As the Review Board has noted,

Given the ingenuity of counsel and the zeal with which they urge their causes, it will be the rare case in which witnesses' testimony cannot be subjected to attack (however frivolous in fact) at the conclusion of the case on grounds that the witness lied or was less than forthcoming in his testimony.

Adell Broadcasting Corp., 57 RR 2d 307, 310 (Rev. Bd. 1984). NOCGSA's efforts went well beyond normal ingenuity and zeal. USCC rebutted each of NOCGSA's attempts in its Reply Findings and in its Reply to Exceptions. Nevertheless, because of the possible survival of such issues as a result of Footnote 3, USCC feels constrained to reiterate here its clear conviction that its witnesses were truthful at the hearing, and that each of NOCGSA's candor allegations is without merit.

1. According to NOCGSA, Mr. Nelson's "primary duty" was to receive and process La Star bills for payment (NOCGSA Proposed Conclusion Number 180), and he therefore lied when he testified that he had "always viewed the La Star matter as a trivial aspect of USCC's business, for which people other than USCC employees have been primarily responsible." NOCGSA Proposed Conclusion Number 181.

Mr. Nelson is the President and Chief Executive Officer of USCC, which at the time of the hearing managed 44 operational cellular systems. USCC Exhibit No. 1, p.2, p.13. He was a member of the management (or similar) committees of entities holding interests in 100 cellular markets. USCC Exhibit No. 1, p. 15. Between 1987 and 1990, USCC put 43 cellular systems on line. USCC Exhibit No. 1, p. 7. In 1990, USCC's service revenues exceeded \$55 million, and it had 660 employees. USCC Exhibit No. 1, p. 1. Mr. Nelson's primary duty was to run USCC, as its President and Chief Executive Officer. Obviously, his "primary duty" has never been merely to receive and process La Star bills, and no witness ever suggested that it was. Arranging for payment of La Star' expenses was a

duty performed by Mr. Nelson during the period that USCC was required by the La Star Joint Venture Agreement to pay all the expenses. While this perfunctory task may have been his "primary duty" as a member of the La Star management committee, it was certainly trivial when compared to the management of 44 operational systems and interests in more than 100 cellular markets. Mr. Nelson thus testified consistently and truthfully. La Star Exhibit No. 15, p. 5.

2. According to NOCGSA, Mr. Nelson lied about his, and USCC's, involvement in La Star, by stating "Although I am a member of La Star's management committee, I have not been actively involved in the day-to-day management of La Star." NOCGSA Proposed Conclusion Number 181.

As Mr. Nelson stated, in the same direct testimony, the day-to-day activities of La Star were "primarily litigious" in nature (La Star Exhibit No. 15, p. 2), and since La Star was not an operating cellular company, there was nothing to "manage" on a day-to-day basis. Later, after USCC had been allowed to intervene in the proceeding, he testified:

Aside from asking USCC personnel to respond helpfully to Mr. Belendiuk's requests for assistance, I have had very little personal involvement, and have taken very little personal interest, in the La Star matter. During the past several years, I, like other USCC employees, have been kept extremely busy, and generally over-extended, doing what had to be done to get the cellular systems for which we are responsible operational and working well. My typical work day begins before 8:00 a.m. and ends after 6:00 p.m. I travel extensively, and typically spend two or three days per week away from office, out of town. In 1990, I was out of town for business on approximately ninety days. I have always viewed the La Star matter as a trivial aspect of USCC's business, for which people other than USCC employees have been primarily responsible, and I have devoted only the minimal time necessary to it; I

have not sought opportunities to do more. I do not believe that any La Star activity to date of which I have become aware would have justified my attendance, or the attendance of the other USCC member, Mr. Kenneth R. Meyers, at a La Star management committee meeting in Louisiana or elsewhere outside of Chicago. Nor do I believe that any La Star activity to date would have justified any more time than I devoted to it. I believe that the time which I have devoted to the 'control' issue in the present hearing, attributable to my deposition and hearing testimony, has been greater by a substantial multiple than all of my other involvement in the La Star matter.

USCC Exhibit No. 1, p. 16. This testimony, which was not challenged by NOCGSA through cross examination or rebuttal evidence, establishes the truth of Mr. Nelson's statement that he had not been "active" in the day-to-day management of La Star.⁸ Everything Mr. Nelson and USCC did at the request of La Star's counsel, Mr. Belendiuk (Tr. 1334), was done in the belief that Mr. Belendiuk was guided by the wishes of SJI (Tr. 1379-1380; Tr. 1385-1386; Tr. 1454), whose principals constituted three of the five members of the management committee and therefore, in Mr. Nelson's view, controlled it. Tr. 1380. At no time did Mr. Nelson (or any other USCC employee) question Mr. Belendiuk's requests or volunteer to do more; they simply did as he asked them to do. USCC Exhibit No. 1, p. 14.

3. According to La Star, Mr. Nelson lied by characterizing the La Star management committee as having had meetings, at which votes were taken, in person or by telephone, and by not acknowledging that he relied exclusively or nearly so on conversations with La Star's counsel. NOCGSA Proposed Conclusions Number 184-186.

⁸ See pp. 26 - 55, *infra*.

Mr. Nelson did **not** testify that the La Star management committee had meetings, at which votes were taken, in person or by telephone. To the contrary, he testified that since the time when USCC had become involved in August, 1987, the La Star management committee had functioned on an informal basis, that he had conferred with the SJI members of the La Star management committee only a few times, when a particular issue required consultation,⁹ and that his usual contact was with La Star counsel, Mr. Belendiuk:

Generally, I would receive a telephone call from Mr. Belendiuk and he would advise me of a need for La Star to take some action. Most of the calls involved a proposed course of action to be taken in the La Star litigation, e.g., the need to file an appeal. I understood that he had first spoken to someone at SJI Cellular and that the course of action had already been approved by SJI Cellular.

La Star Exhibit No. 15, pp. 2 - 4. Mr. Brady similarly testified that he, or Mr. Crenshaw at SJI, would typically receive a call from Mr. Belendiuk, discuss a suggested course of action and agree on how Mr. Belendiuk would proceed. Mr. Belendiuk would then call someone at USCC and tell them "the course of action to be taken. If there is no disagreement (and there has never been any to my

⁹ For example, there was a conference call with one or more SJI representatives to the La Star management committee concerning settlement negotiations. In Mr. Nelson's view, because the SJI and USCC representatives on the call were in agreement, the decision which was reached on settlement was "unanimous." Tr. 1447.

knowledge), there is no need for a meeting between SJI Cellular and Star." La Star Exhibit No. 12, p. 6.¹⁰

4. According to NOCGSA, Mr. Nelson lied when he testified that, once the system becomes operational, in accordance with USCC's usual practice, any USCC input will be from the USCC Partnership Relations Personnel, rather than from him personally, because that is inconsistent with La Star Exhibit No. 9. NOCGSA Proposed Conclusion Number 188-198.

Mr. Nelson's testimony as to USCC's usual practice, and his testimony that he intended for USCC to follow that usual practice with respect to La Star, is consistent with both the facts and the record, and is truthful. Although La Star Exhibit No. 9 states that the "La Star's management team will be headquartered in Larose, Louisiana," Mr. Nelson was neither the author nor the sponsor of that exhibit. Moreover, Mr. Nelson was not asked about La Star Exhibit No. 9 at the

¹⁰ Inexplicably, the *Initial Decision* states:

[T]here is **no evidence** in the record which **even suggests** that SJI was orchestrating and overseeing counsel's activities, or, for that matter, was even aware of the many activities engaged in by USCC and its employees on behalf of La Star. This is abundantly clear since USCC did not coordinate or check with SJI regarding La Star activities and never questioned the propriety of SJI's non-involvement.

Initial Decision, ¶222. (emphasis added). This conclusion omits consideration of the testimony of Mr. Nelson that when Mr. Belendiuk called him to ask for something, Mr. Nelson understood that Mr. Belendiuk had previously discussed the matter with Mr. Brady or some other SJI principal, such as Mr. Crenshaw. Tr. 1379; Tr. 1380; Tr. 1385; Tr. 1454. It also ignores Mr. Brady's similar testimony (Tr. 980), and seems to assume that Star should have taken a more assertive role in La Star affairs, by calling SJI to ascertain whether La Star's attorney was accurately relaying information from SJI.

hearing, and there is no suggestion in the record that he ever saw it or was even aware of it. Additionally, Mr. Nelson never testified that he considers himself, or anyone else connected with USCC, to be included in the term "management team." Neither Mr. Nelson nor Mr. Meyers had any intention of moving there or even visiting the place with any frequency, if at all, as stated in USCC Exhibit No. 1, p. 14.

5. According to NOCGSA, Mr. Nelson "was anything but forthcoming about USCC's -- and his -- role with regard to the payment of La Star system expenses." NOCGSA Proposed Conclusion No. 180.

NOCGSA's apparent contention is that Mr. Nelson tried to conceal the fact that USCC had paid all of the La Star bills. However, there was no dispute whatsoever about who paid expenses related to the La Star application from the time that USCC acquired its interests in La Star until the Joint Venture Agreement was modified in 1990. Mr. Nelson stated, in his direct testimony, that USCC processed and paid **all** the bills, routinely and without objection, and that his primary duty as one of Star's two representatives on the La Star management committee was to receive bills and process them for payment. La Star Exhibit No. 15, pp. 1 - 5.

NOCGSA's apparent point arises from the fact that, after repeated and suggestive cross examination about the matter, Mr. Nelson testified that there **might** conceivably have been **some** La Star expenses which had been processed

by someone else at USCC in his absence, or for which SJI had not sought reimbursement, and that he did not know about. Tr. 1355 - 1360. Mr. Nelson's testimony, however, was clear -- and it is undisputed -- that to the best of Mr. Nelson's knowledge, USCC routinely paid **everything** for La Star, from the time when USCC acquired its interests in Star in 1987 until the Joint Venture Agreement was changed in 1990.

6. According to NOCGSA, Mr. Nelson lied about his understanding of the designation of Mr. James Brady as La Star's general manager. NOCGSA Proposed Conclusion Number 183.

This contention is also untrue. When Mr. Nelson testified at his deposition, he stated that he did not know whether La Star had designated a general manager. Later, in his direct case testimony, to update his deposition testimony, admitted in evidence as NOCGSA Exhibit No. 9E, pp. 14-15, he testified that it had **become** his understanding that Mr. Brady had been proposed as the La Star general manager in the La Star application in 1983, something of which he had not been aware in 1987 (La Star Exhibit No. 15, p. 6) or at the time of his deposition. Mr. Nelson testified that he had subsequently learned of Mr. Brady's earlier proposed role as general manager from counsel to La Star. Tr. 1438. NOCGSA does not even suggest any way in which Mr. Nelson's reliance on La Star's counsel for this information was improper, let alone how or in what respect his testimony was untruthful. Nor does NOCGSA even seem to contend that Mr. Brady had not been designated as La Star's general manager in 1983.

7. According to NOCGSA, Mr. Goehring lied when he testified that he "played no role in the engineering or design of La Star's cellular system, its 1987 amendment, or its Proposal for Interim Operation." NOCGSA Proposed Conclusion Number 190.

Mr. Goehring was USCC's Vice President for Engineering and Operations (La Star Exhibit No. 16, p. 1) and would have been the "logical point to interface" with La Star's engineering consultant, Mr. Biby, **had there been any need for it.** Tr. 1481. There was none, however, and Mr. Goehring did not even recall having seen, much less having worked on, the design of the La Star cellular system, the 1987 amendment, or the proposal for interim operation. Tr. 1511 - 1514. He chose no La Star cell sites; he had nothing to do with cell site configuration beyond possibly receiving a courtesy copy of a map showing the cell sites from La Star's engineering consultant (Tr. 1493); he negotiated no cell site option agreements; and he selected no La Star equipment (La Star Exhibit No. 16, p. 1), even though those are among the normal duties he would have supervised for a USCC cellular system. *Ibid.* Consistent with Star's responsibility under the Joint Venture Agreement to pay La Star's expenses, he did approve invoices for cell site extensions and sign cell site extension agreements. *Ibid.* He also prepared an affidavit at Mr. Belendiuk's request concerning the reasonableness of La Star's equipment costs in relation to those experienced by USCC. *Id.* at 2. Mr. Goehring never attempted to conceal either of these actions, which in any event do not contradict his testimony that he played no role in the engineering or design of La Star's cellular system, its 1987 amendment, or its proposal for interim operation.